

## **WARNING**

This material has been reproduced and communicated to you by or on behalf of *Charles Darwin University* in accordance with section 113P of the *Copyright Act 1968 (Act)*.

The material in this communication may be subject to copyright under the Act.  
Any further reproduction or communication of this material by you may be the subject of copyright protection under the Act.

**Do not remove this notice**



Family Name						
Given Name/s						
Student Number						
Teaching Period	Semester 2, 2017					

LWZ204 – Constitutional Law	DURATION	
	Reading Time:	20 minutes
	Writing Time:	120 minutes
INSTRUCTIONS TO CANDIDATES		
<ol style="list-style-type: none"> <li>1. This examination paper <b>CONTAINS SIX (6) questions</b>. There are <b>TWO (2) questions in PART A and FOUR (4) questions in PART B</b>.</li> <li>2. Candidates <b>MUST ANSWER BOTH QUESTIONS IN PART A</b>.</li> <li>3. Candidates <b>MUST ANSWER TWO (2) of the FOUR (4) questions In PART B</b> according to their choice.</li> <li>4. This examination accounts for sixty (60) assessment marks (60% of the unit assessment).</li> <li>5. The value of each questions is set out immediately following each question.</li> <li>6. Use only black or dark blue ink. Do not write in pencil.</li> <li>7. Please ensure that your Name and Student Number are written clearly in the space provided at the top cover page of the examination answer booklet and on this examination paper.</li> </ol>		
EXAM CONDITIONS		
<p><u>You may begin writing from the commencement of the examination session.</u> The reading time indicated above is provided as a guide only.</p>		
This is an OPEN BOOK examination		
No calculators are permitted		
Any handwritten material is permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED	
Any printed material with the exception of CDU Library books	1 x 20 Page Book 1 x Scrap Paper	

THIS EXAMINATION IS PRINTED  
DOUBLE-SIDED.

THIS PAGE HAS BEEN INTENTIONALLY  
LEFT BLANK.

## **PART A**

**You must answer all questions in Part A. Suggested time allocation for Part A: 1 hour, 20 minutes**

### **QUESTION ONE**

**This question is compulsory**

Ace Wheelchairs ('Ace'), a retailer of wheelchairs operates in New South Wales. Most of its wheelchairs are produced in Victoria though the bulk of its sales take place in New South Wales. It now has 12% of the market for wheelchair sales in New South Wales. Its major competitor in New South Wales is Chairs Access, Ltd., a wholesale wheelchair merchant which manufactures and sells to retailers approximately 60% of the wheelchairs produced in New South Wales.

The State Parliament of New South Wales recently passed a wheelchair licensing scheme through the *Wheelchair Licensing Act 2016 (NSW)* (hereinafter the NSW Act). Under the NSW Act, all wheelchairs sold in New South Wales are subject to a license fee, the proceeds of which are to be redistributed to primary and secondary schools in the state to help promote the participation of individuals confined to wheelchairs. Wheelchair wholesalers must pay a 25% fee based on the value of the proceeds sold in the previous twelve-month period. Wheelchair retailers, such as Ace Wheelchairs, must pay a flat fee of \$100 plus a 25% tax on all wheelchairs purchased from wholesalers outside New South Wales. Wheelchair retailers who purchase their wheelchairs from wholesalers in New South Wales must pay no fee at all. The purpose of this scheme is to ensure that each wheelchair incurs a licence fee only once (either at the wholesale or retail level).

Discuss whether the NSW Act is a valid exercise of state legislation.

**(Marks: 20)**

## QUESTION TWO

### **This question is compulsory**

a) In August 2003, the International Labour Organization Convention (No. 156) concerning *Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities* entered into force generally. Australia ratified the Convention in 2015. The Convention has 19 articles and recognises that “all human beings have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.” The purpose of the Convention is to provide effective equality of opportunity and treatment for men and women workers with family responsibilities.

Article 3 of the Convention provides:

- (1) With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable married persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and without conflict between their employment and family responsibilities.

Article 8 of the Convention further provides:

- (1) Family responsibilities shall not constitute a valid reason for termination of employment.

In 2016, the Commonwealth Parliament passed the *Workers Reform Act 2016* (Cth) (hereinafter the Cth Act).

Section 1 of the Cth Act provides:

- (1) Employers are prohibited from denying employment to a prospective full-time or casual worker due to carer or family obligations of such prospective employee. A caring relationship is defined to include any relationship between two unmarried adults, whether or not related by family, one of whom provides the other with domestic support and personal care.
- (2) Employers must accommodate the working hours of its employees so as not to interfere with carer or family obligations.
- (3) Employees may be terminated from employment only for just cause. Carer or family obligations are insufficient bases upon which to terminate employment for just cause.

Discuss whether the Cth Act is a valid exercise of power under Section 51(xxix) of the Constitution. **(Marks: 20)**

## **PART B**

**You must answer only TWO questions in Part B.**

**Suggested Time allocation for Part B: 40 minutes**

### **QUESTION THREE**

A key criticism of vertical fiscal imbalance is that it splits accountability between revenue raising and service delivery. What are some of the negative consequences of such split accountability? (Give concrete examples). Are such negatives offset by the ability to centralise policy-making?

**(Marks: 10)**

### **QUESTION FOUR**

Discuss the contemporary relevance of Section 44 of the Constitution. Do you think Section 44 is in need of reform? Explain.

**(Marks: 10)**

### **QUESTION FIVE**

Should the Constitution be amended to provide recognition to Indigenous Australians? Discuss.

**(Marks: 10)**

### **QUESTION SIX**

Would a Bill of Rights at the national level be a positive development for Australia's constitutional structure? If so, explain what form a Bill of Rights should take and provide a justification for the types of rights it should include. If not, explain your opinion with reference to the impact a Bill of Rights would have on Australia's legal and political systems.

**(Marks: 10)**

---

**END OF EXAMINATION QUESTION PAPER**